

CONTRACTING BY NEGOTIATION

INSTRUCTOR GUIDE

FEDERAL ACQUISITION INSTITUTE
CURRICULUM OF PROCUREMENT
TRAINING COURSES

CURRENT THROUGH
FAC 90-25

OFFICE OF ACQUISITION POLICY
GENERAL SERVICES ADMINISTRATION

TOPIC: DETERMINE NEED FOR C&P DATA

Ref.: Chapter 10, Pages 10-5 and 10-6

Objective: When you finish this lesson, your students should be able to:

- Determine whether certified cost or pricing data are required.

Time: Monday 1:35 - 1:45

Method: Lecture

Lesson Plan

Ref.	Steps In Presenting The Topic	Instructors Notes
<div data-bbox="362 770 399 806"></div> <div data-bbox="399 770 423 806">TR 10-5</div> <div data-bbox="928 1335 1023 1430">FAR 15.804- 2(a)(1)</div>	<h3 data-bbox="599 770 1039 819">10.1.1 Determine Need for C & P Data.</h3> <p data-bbox="599 871 1039 1018"><u>Tell</u> the class that when they review the SOW and prepare the RFP, they should also get an idea on the need for cost or pricing data.</p> <p data-bbox="599 1066 1039 1287"><u>Explain</u> that the threshold for obtaining certified cost or pricing data is \$500,000. Unless an exemption applies, cost or pricing data are required before accomplishing the following actions that exceed the threshold:</p> <ul data-bbox="647 1335 1039 1703" style="list-style-type: none"> • Award of any <u>negotiated</u> contract; • Award of a subcontract at any tier, if the contractor and each higher tier subcontractor were required to furnish cost or pricing data; or • Modification of <u>any</u> contract; or modification of a subcontract if the contractor and each higher tier subcontractor were required to furnish cost or pricing data. 	<p data-bbox="1088 770 1320 835">Explain to the class that this objective is taught out of sequence.</p> <p data-bbox="1088 1018 1320 1178">Tell the class that sometimes a contractor is exempt from providing certified cost or pricing data.</p> <p data-bbox="1088 1213 1320 1299">This and more on cost or pricing data will be covered in Lesson 10.</p>

End Of Chapter 2 - Statement Of Work

FIXED PRICE INCENTIVE (FPI)	COST PLUS FIXED FEE (CPFF)	COST PLUS INCENTIVE FEE (CPIF)	COST PLUS AWARD FEE (CPAF)	COST OR COST SHARING (C/CS)	TIME & MATERIALS (T&M)
Labor or material requirements for the work are moderately uncertain. Hence, the Government assumes part of the risk.	Labor hours, labor mix, and/or material requirements (among other things) necessary to perform are highly uncertain and speculative. Hence, the Government assumes the risks inherent in the contract—benefiting if the actual cost is lower than the expected cost; losing if the work cannot be completed within the expected cost of performance. Some cost type contracts include procedures for raising or lowering the fee as an incentive for the contractor to perform at lower cost and/or attain performance goals.				
A ceiling price can be established that covers the most probable risks inherent in the nature of the work. The proposed profit sharing formula would motivate the contractor to control costs and meet other objectives.	Relating fee to performance (e.g., to actual costs) would be unworkable or of marginal utility.	A objective relationship can be established between the fee and such measures of performance as actual costs, delivery dates, performance benchmarks, and the like.	Objective incentive targets are not feasible for critical aspects of performance. Judgmental standards can be fairly applied. ¹ Potential fee would provide a meaningful incentive.	<ul style="list-style-type: none"> The contractor expects substantial compensating benefits for absorbing part of the costs and/or foregoing fee, or The vendor is a nonprofit entity. 	Costs are too low to justify an audit of the contractor's indirect expenses.
<ul style="list-style-type: none"> A ceiling price. Target cost. Target profit. Delivery, quality, and/or other performance targets (optional) A profit sharing formula. 	<ul style="list-style-type: none"> Target cost. A fixed fee. 	<ul style="list-style-type: none"> Target cost. Performance targets (optional) A minimum, maximum, and target fee. A formula for adjusting fee based on actual costs and/or performance. 	<ul style="list-style-type: none"> Target cost. Standards for evaluating performance. A base and maximum fee. Procedures for adjusting "fee", based on performance against the standards. 	<ul style="list-style-type: none"> Target cost. If CS, an agreement on the Government's share of the cost. No fee. 	<ul style="list-style-type: none"> A ceiling price. A per hour labor rate that also covers overhead and profit. Provisions for reimbursing direct material costs.
Provide an acceptable deliverable at the time and place specified in the contract at or below the ceiling price.	Make a good faith effort to meet the Government's needs within the estimated cost in the Schedule.				Make a good faith effort to meet the Government's needs within the "ceiling price."
Realizes a higher profit by completing the work below the ceiling price and/or by meeting objective performance targets.	Realizes a higher rate of return (i.e., fee divided by total cost) as total cost decreases.	Realizes a higher fee by completing the work at a lower cost and/or by meeting other objective performance targets.	Realizes a higher fee by meeting judgmental performance standards.	If CS, shares in the cost of providing a deliverable of mutual benefit.	
Production of a major system based on a prototype.	Research study.	Research and development of the prototype for a major system.	Large scale research study.	Joint research with educational institutions.	Emergency repairs to heating plants and aircraft engines.
Must be negotiated. Contractor must have an adequate accounting system. Targets must be supported by the cost data.	The contractor must have an adequate accounting system. The Government must exercise surveillance during performance to ensure use of efficient methods and cost controls. Must be negotiated. Statutory and regulatory limits on the fees that may be negotiated. Must include the applicable "Limitation of Cost" clause at FAR 52.232-20 through 23. (CPFF requires justification.)				Labor rate must be negotiated. Must be justified. The Government must exercise appropriate surveillance to ensure efficient performance.
Firm or Successive Targets	Completion or Term.				Labor Hour

Exhibit 4-2

Review Exercise 10-1 “Standard Form 1412.”

Ask one of the groups to give their answer to the exercise.

Lead the class in a discussion asking the following questions:

- Is the offeror exempt from submitting cost and price data?
- If not, why not?
- If the offeror is exempt, what would the Contract Specialist do to verify prices?



TR 10-
13

10.1.3 Obtain C & P Data.

Explain the procedures for notifying the offeror of the need to submit cost or pricing data.



• Question:

What must be done if the offeror refuses to provide or certify cost or pricing data?

Answer: If this data is required, a contract action cannot be completed without it. The pending award or price adjustment must be withheld and the matter referred to a higher authority. A decision may be made to negotiate with an alternate source.

Describe the circumstances under which a subcontractor is required (prior to price negotiations) to submit certified cost or pricing data.

1. If the prime contractor has to submit certified cost or pricing data and a subcontract estimate exceeds \$500,000, then the subcontractor must submit certified cost or pricing data to the prime Contractor (or higher tier subcontractor) for use by the prime contractor in preparing submission to the contracting officer.
2. If the prime contractor has to submit certified cost or pricing data and a subcontract estimate exceeds \$1,000,000 (or is more than \$500,000 and more than 10% of the prime contractor's proposed price), then the prime contractor must submit the subcontractor's certified cost or pricing data along with its proposal to the Contracting Officer.



TR 10-
15

10.1.4 Identify Defective Data.

Describe how to review cost or pricing data prior to award for accuracy.

Tell the class that the Government may be entitled to an adjustment of the negotiated price if certified cost or pricing data are found to be inaccurate, non-current or incomplete.

10.1.5 Obtain Certificate.

Explain to the class that cost or pricing data must be certified as of the date of final agreement on price.

Explain to the class that this course does not cover pages 10-17 and 10-18 of the TR-Certificates of Commercial Pricing Data (and there are no exam items on this topic).

4. Leslie Nielson, Contract Specialist for the July 4th fireworks display held in Washington D.C., has received five different proposals ranging in price from \$79,000 to \$176,000. Based on your knowledge of the fireworks procurement, should Leslie request an audit of any of the offerors?

Instructor's answer: Leslie should **not** request an audit because the cost of the procurement is less than \$500,000. Leslie will be able to determine a fair and reasonable price due to the level of competition.

Review Exercise 11-2 “Elements of Cost.”

Select a group and ask them to present their answers to the first case study. Continue with a different group until the entire exercise has been discussed.

Lead the class in a discussion on the exercise. Ask the following questions:

- How must you assess the allowability of elements of cost?
- How must you assess the allocability of elements of cost?

Tell the students this is only an introduction. They may take a specific Cost Analysis Course later if they want.



CE 11-4

Assign Exercise 11-3 “Cost Analysis.”

Tell the class that they are to assume that the proposal of Burnett Fireworks, Inc. is the only proposal received in response to the fireworks RFP.

Tell the groups to turn to page CE 11-4 in the Classroom Exercise Book and answer the preliminary question in preparation for cost analysis.

Instruct the groups to perform a cost analysis using the Burnett proposal, the Independent Government Cost Estimate, and the Audit Summary provided.

Ask the groups to summarize their cost analysis rationale in paragraph form.

Tell the class that they have 40 minutes to complete this exercise.

Although well under \$500,000, tell the class to assume that the Contracting Officer felt that the circumstances warranted use of an audit.

Walk around the room and assist the groups as necessary.

Answer any questions the students may have.